

Message Text

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ACTION DLOS-09

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EB-08 EPA-01 SOE-02 DOE-15 FMC-01 TRSE-00 H-01
INR-10 INT-05 IO-13 JUSE-00 L-03 NSAE-00 NSC-05
NSF-01 OES-09 OMB-01 PA-01 PM-05 SP-02 SS-15
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FM USMISSION USUN NEW YORK
TO SECSTATE WASHDC 3202

C O N F I D E N T I A L SECTION 01 OF 02 USUN NEW YORK 03463

FROM LOSDEL

E.O. 11652: GDS
TAGS: PLOS
SUBJECT: LOS CONFERENCE DAILY SUMMARY - AUGUST 31

SUMMARY: AN UNREALISTIC CAPITAL EXPENDITURES PROPOSAL
ABSORBED THE ENERGIES OF NG-2. THE THIRD COMMITTEE MOVED
FORWARD ON THE POLLUTION AMENDMENTS UNDER REVIEW. NG-7
CONSIDERED TWO VARIATIONS OF AN INTERIM REGIME FOR
DISPUTED MARITIME BOUNDARIES. PROBLEMS WITH THE SPANISH
ICNT WERE CONSIDERED BY THE DRAFTING COMMITTEE. END
SUMMARY

1. NG-2 (FINANCIAL ARRANGEMENTS) DISCUSSED DEVELOPMENT
COSTS (PARAGRAPH 7 SEXIES F OF THE KOH TEXT). MOST OF
THE DEBATE WAS STERILE BECAUSE IT FOCUSED ON THE TOTALLY
UNREALISTIC TUNISIAN PROPOSAL THAT CAPITAL EXPENDITURES
INCURRED AFTER PRODUCTION HAD STARTED SHOULD NOT BE
DEDUCTIBLE. THE US SUGGESTED THAT GENERALLY ACCEPTED
ACCOUNTING PRINCIPLES SHOULD BE USED FOR ANALYZING SUCH
EXPENDITURES, AND CHAIRMAN KOH WILL IN ALL LIKELIHOOD
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ACCEPT THAT SUGGESTION (WHICH WAS SUPPORTED BY TRINIDAD
AND TOBAGO AND INDONESIA).

2. CHAIRMAN KOH MAY HAVE ALLOWED THE TUNISIAN DELEGATE
TO GO ON AT LENGTH ABOUT HIS IDEA BECAUSE WITHOUT SPECIFIC
NEW FINANCIAL ARRANGEMENTS PROPOSALS AT THIS SESSION,
NG-2 HAS BEEN TREADING WATER. THIS MAY WELL CHANGE

SEPTEMBER 5, BECAUSE THE US HAS BEEN INFORMED BY MINISTER EVENSEN (NORWAY) THAT HE INTENDS TO PUT FORWARD A NEW PROPOSAL. THE USDEL HAS SEEN THE NORWEGIAN DRAFT AND IT IS MORE MODERATE (FROM THE US POINT OF VIEW) THAN EVENSEN'S GENEVA PROPOSAL OR THE INDIAN ONE.

3. AMBASSADOR KOH WANTED TO GO ON TO SUBPARAGRAPH SEXIES (G) OF HIS TEXT TO DISCUSS WHETHER THE EQUIPMENT USED BY AN OPERATOR SHOULD AT THE TERMINATION OF HIS CONTRACT BE TRANSFERRED TO THE ENTERPRISE. THE US OBJECTED BECAUSE TRANSFER OF TECHNOLOGY IS UNDER THE MANDATE OF NG-1. THE G-77 WANTED TO REVIEW THIS SUBJECT BUT KOH DEFERRED IT TO CONSULT WITH OTHER NEGOTIATING GROUP CHAIRMEN BEFORE PROCEEDING.

4. NEGOTIATIONS IN THE THIRD COMMITTEE TOOK PLACE IN THE SMALL WORKING GROUP. (VALLARTA QUICKLY ADJOURNED THE SCHEDULED THIRD COMMITTEE INFORMAL MEETING TO CONTINUE CONSULTATIONS IN THE SMALLER FORUM AMONG THE MOST INTERESTED PARTIES.)

5. IN THE SMALL GROUP MORNING SESSION, AGREEMENT WAS REACHED REGARDING THE PACKAGE SUBMISSION OF A NUMBER OF THE OUTSTANDING PROPOSALS TO THE THIRD COMMITTEE. IN THIS SPIRIT, THE UK SIGNALLED ITS ACCEPTANCE OF THE CANADIAN PROPOSAL (FOR ARTICLE 221 (5)), WHEREUPON CANADA

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INDICATED THAT THE SPONSORS OF AN AMENDMENT (TO ARTICLE 212 (3) AND OPPOSED BY THE UK) WOULD NOT PRESS THAT CHANGE. ARTICLE 221 (5) AS AMENDED WOULD INCLUDE THE FOLLOWING:

". . . AND THE VIOLATION HAS RESULTED IN A SUBSTANTIAL DISCHARGE CAUSING OR THREATENING SIGNIFICANT POLLUTION OF THE MARINE ENVIRONMENT. . . "

6. IT WAS FURTHER AGREED THAT ARTICLE 221(2) AND (6) WOULD BE REVISED SO THAT THE PHRASE "CAUSE PROCEEDINGS" WOULD BE FOLLOWED BY "INCLUDING DETENTION OF THE VESSEL". IT WAS THE UNDERSTANDING OF THOSE INVOLVED IN THE NEGOTIATIONS RELATING TO ARTICLE 221 THAT "DETENTION" INCLUDES DELAYING THE VESSEL PENDING THE ISSUANCE OF BONDING OR OTHER FINANCIAL SECURITY.

7. FRANCE WITHDREW ITS OPPOSITION TO THE USE OF THE TERM "WILFUL" IN ARTICLE 231, WHICH WILL BE INCLUDED IN THE PACKAGE AS REPORTED IN USUN 3363. PARAGRAPH 2 OF THE ICNT BECOMES PARAGRAPH 3.

8. FRANCE ALSO WITHDREW ITS PROPOSAL FOR AMENDING ARTICLE 219 AND DID NOT INSIST ON ITS CONTROVERSIAL AMENDMENT TO ARTICLE 229.

9. IT WAS AGREED THAT ARTICLE 227 (1) WOULD BE REDRAFTED TO READ AS FOLLOWS:

STATES SHALL NOT DELAY A FOREIGN VESSEL LONGER THAN IS ESSENTIAL FOR PURPOSES OF INVESTIGATION PROVIDED FOR IN ARTICLES 217, 219 AND 221 OF THIS PART OF THE PRESENT CONVENTION. ANY PHYSICAL INSPECTION OF A FOREIGN VESSEL SHALL BE LIMITED TO AN EXAMINATION OF SUCH CERTIFICATES, RECORDS OR OTHER DOCUMENTS AS THE VESSEL IS REQUIRED TO CARRY BY GENERALLY ACCEPTED INTERNATIONAL CONFIDENTIAL

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INFO OCT-01 ISO-00 AF-10 ARA-10 EA-10 EUR-12 NEA-10
ACDA-12 AGRE-00 AID-05 CEA-01 CEQ-01 CG-00
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RULES AND STANDARDS OR OF ANY SIMILAR DOCUMENTS WHICH IT IS CARRYING. FOLLOWING SUCH AN EXAMINATION, AN INSPECTION OF THE VESSEL MAY BE UNDERTAKEN ONLY WHEN THERE ARE CLEAR GROUNDS FOR BELIEVING THAT THE CONDITION OF THE VESSEL OR ITS EQUIPMENT DOES NOT CORRESPOND SUBSTANTIALLY WITH THE PARTICULARS OF THOSE DOCUMENTS OR WHEN THE CONTENTS

OF SUCH DOCUMENTS ARE NOT SUFFICIENT TO CONFIRM OR VERIFY A SUSPECTED VIOLATION OR WHEN THE VESSEL IS NOT CARRYING VALID CERTIFICATES AND RECORDS. IF THE INVESTIGATION INDICATES A VIOLATION OF APPLICABLE LAWS AND REGULATIONS OR INTERNATIONAL RULES AND STANDARDS FOR THE PRESERVATION OF THE MARINE ENVIRONMENT RELEASE SHALL BE MADE PROMPTLY SUBJECT TO REASONABLE PROCEDURES SUCH AS BONDING OR OTHER APPROPRIATE FINANCIAL SECURITY. WITHOUT PREJUDICE TO APPLICABLE INTERNATIONAL RULES AND STANDARDS RELATING TO THE SEAWORTHINESS OF SHIPS, THE RELEASE OF A VESSEL MAY, WHENEVER IT WOULD PRESENT AN UNREASONABLE THREAT OF DAMAGE TO THE MARINE ENVIRONMENT, BE REFUSED OR MADE CONDITIONAL UPON PROCEEDING TO THE NEAREST APPROPRIATE REPAIR YARD. IN SITUATIONS WHERE RELEASE HAS BEEN REFUSED OR MADE CONDITIONAL, THE FLAG STATE OF THE

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VESSEL MUST BE PROMPTLY NOTIFIED, AND MAY SEEK RELEASE OF THE VESSEL IN ACCORDANCE WITH THE PROVISIONS OF PART XV OF THE PRESENT CONVENTION."

10. VALLARTA INDICATED THAT THE ARAB PROPOSAL (TO AMEND ARTICLE 236) WAS NOT RIPE FOR INCLUSION IN THE PACKAGE AND ITS SPONSORS DID NOT OBJECT. HE FURTHER INDICATED THAT THE SPANISH PROPOSAL (TO AMEND ARTICLE 234) COULD NOT BE INCLUDED IN THE PACKAGE SINCE IT COVERED MATTERS OUTSIDE THE SCOPE OF THE THIRD COMMITTEE AND WAS EXTREMELY CONTROVERSIAL. THE SPANISH DELEGATE, HOWEVER, WAS NOT PRESENT WHEN THIS STATEMENT WAS MADE.

11. IT WAS AGREED LATER TO AMEND ARTICLE 211 (5) BY SUBSTITUTING "CONSIDERATION OF THE MATTER" FOR "CONSULTATION" TO ALLAY THE FEARS OF BRAZIL THAT THE LATTER WORD IMPLIED A VETO.

12. THE SUCCESS OF THE "PACKAGE" WAS THREATENED BY BRAZILIAN INSISTENCE TO AMEND ARTICLE 209, WHICH THE US AND OTHERS COULD NOT ACCEPT. IT WAS FINALLY AGREED THAT THE BRAZILIAN SUGGESTION WOULD NOT BE INCLUDED IN THE FINAL REPORT BUT THAT VALLARTA WOULD SAY THAT PROPOSALS NOT INCLUDED ARE RETAINED AND MAY BE CONSIDERED IN THE FUTURE.

THE WORKING GROUP CONCLUDED BY AGREEING TO DELETE THE PHRASE "INCLUDING INCINERATION" FROM ARTICLE 1, PARAGRAPH 5 (A) (I) TO MAKE IT CONFORM TO THE IMCO DEFINITION OF DUMPING.

13. NG-7 TOOK UP THE QUESTION OF THE INTERIM REGIME FOR DISPUTED MARITIME BOUNDARIES. THE DISCUSSION WAS BASED

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ON TWO IDEAS DRAWN BY JUDGE MANNER FROM PAPERS SUBMITTED IN GENEVA BY PAPUA NEW GUINEA AND NORWAY. ONE IDEA WAS THAT, PENDING DELIMITATION OR AN AGREED PROVISIONAL REGIME, A MORATORIUM ON EXPLORATION AND EXPLOITATION OF THE DISPUTED AREA MIGHT BE ESTABLISHED. THE OTHER WAS THE POSSIBILITY OF A MORE GENERAL OBLIGATION OF THE PARTIES NOT TO TAKE MEASURES "LIKELY TO IMPEDE THE COMPLETION OF FINAL DELIMITATION."

14. FOR THE MOST PART DELEGATES REITERATED PREVIOUSLY STATED POSITIONS. THOSE WHO FAVOR PROVISIONAL MEASURES BASED ON AGREEMENT TENDED TO FAVOR MANNER'S IDEAS. THOSE PREFERING THE MEDIAN LINE AS THE INTERIM RULE OPPOSED THEM. FIFTEEN SPEAKERS TOOK THE FLOOR: SIX SUPPORTED THE MEDIAN LINE (REPUBLIC OF KOREA, COLOMBIA, SPAIN, USSR, CYPRUS, CHILE). THE OTHER NINE (IRELAND, LIBYA, VENEZUELA, FRANCE, TURKEY, MOROCCO, ALGERIA, POLAND, MADAGASCAR) CONTINUED TO ARGUE FOR AN AGREED PROVISIONAL LINE.

15. THE "SECRET" GROUP ON SEABED DISPUTE SETTLEMENT (UNDER THE CHAIRMANSHIP OF ZULETA) DISCUSSED THE QUESTION OF ADVISORY OPINIONS ON THE CONFORMITY WITH THE CONVENTION OF PROPOSED RULES AND REGULATIONS. IT AGREED THAT REQUESTS FOR SUCH OPINIONS CAN BE MADE BY A MINORITY OF THE BODY CONSIDERING SUCH RULES AND REGULATIONS. THERE WAS DISAGREEMENT WHETHER THE MINIMUM NUMBER OF VOTES REQUIRED SHOULD BE ONE-THIRD OF ONE-FOURTH OF THE REQUESTING BODY.

16. THE LANGUAGE GROUPS OF THE DRAFTING COMMITTEE CONTINUE TO WORK ON THE SUBJECT OF RECURRING PHRASES IN THE ICNT. THE MAIN COMMITTEE SPENT ITS MEETING ON PROCEDURAL MATTERS, WITH LITTLE OF SUBSTANCE DISCUSSED. THE MAJOR POINT OF CONTENTION CONCERNS OMISSIONS OF PARTS OF ARTICLES IN THE SPANISH ICNT. THE MECHANISM FOR CORRECTING THAT

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TRANSLATION HAS BECOME THE SUBJECT OF CONCERN SINCE ALL TEXTS WILL BE EQUALLY AUTHENTIC. THIS PROBLEM MAY BE HANDLED BY A PLENARY MEETING OF THE COMMITTEE TO CONSIDER EACH OMISSION ARTICLE-BY-ARTICLE. YOUNG.

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